

VELVET RIDGE ELK RANCH DECISION DOCUMENT June 25, 1997

Game Farm Application and MEPA Review

Montana Department of Fish, Wildlife & Parks (FWP) received an application for a game farm license from Jay and Kylanne Sandelin on October 30, 1996. On November 29, 1996, FWP accepted the original application as complete which initiated a 120-day review and decision period per laws governing game farms.

The applicants propose raising elk for breeding stock and antler production. Up to 20 elk will be raised within three fenced areas totaling 12 acres. The area is a moist forest type consisting primarily of spruce, aspen and larch that is bisected by a BPA power line. Trees vary substantially in height with most under 50'. The proposed project is located approximately 12 miles northwest of Whitefish, Montana.

A draft Environmental Analysis (EA) on the proposal was prepared pursuant to the Montana Environmental Policy Act (MEPA) and the game farm statute and distributed for public review on February 28, 1997. The draft EA identified no significant impacts that could not be mitigated.

Comments were accepted through March 20, 1997. FWP received five written responses to the EA. In addition, one individual stated their comments by phone. All were against the proposed game farm. The threat of disease transmission to wild and domestic animals and the potential for contamination of surface and ground water were the most common issues raised. Other concerns cited include: the creation of a barrier to the movement of wild animals, increased use of a private road, the potential for impacts of a wetland area, and the threats posed by the ingress and egress of animals.

Due to the concerns expressed regarding the hydrology of the project area and the potential for environmental contamination from a game farm, a decision on the proposed project was delayed pending the outcome of an examination of the site by a professional hydrologist. FWP contracted with RLK Hydro, Inc. (Kalispell), to examine the area for potential of ground and surface water contamination, whether or not the area contained jurisdictional wetlands, and how potential problems resulting from this project might be mitigated. Due to the heavy snowpack of this past winter, they were unable to examine the site until May 10, 1997. A final report on their findings was received by FWP on June 2, 1997.

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RLK Hydro, Inc., concluded that the majority of the site consists of spruce wetland, with a lesser amount of the area considered a jurisdictional wetland, subject to the regulatory authority of the Army Corps of Engineers. While some intermittent surface runoff could be expected to the north towards Tamarack Creek, the total amount was relatively minor. While greater surface runoff can be expected in the future due to the trampling of vegetation and the compaction of soils, its impact was considered to be minimal given the relatively small size of the project area. RLK Hydro, Inc., also concluded that groundwater contamination was unlikely, since the principal water-producing zone lies 50 - 150' below the surface.

Nevertheless, RLK suggested that a buffer of at least 25' wide of undisturbed vegetation along the north boundary of the project area could be used to filter out sediment, nutrients, and microorganisms. This is consistent with the applicants' fencing plans. RLK further recommended that a 50 X 125' area of jurisdictional wetlands be excluded from the enclosure.

The Department has reviewed and responded to the public comments and determined that the draft EA addressed the issues they raised. The Department, accordingly, issued a Final EA which adopted the draft EA, determined that the proposed project will create no significant impacts on the human environment and determined, therefore, that an environmental impact statement was not required.

Proposed Decision

Based upon our review of the EA, the game farm license application file and the information noted below, the FWP has determined that a license to operate the game farm in question will be issued. The issuance of this license is contingent upon approval of fence construction, Department of Livestock approval of quarantine and handling facilities and the Licensees' adherence to the stipulations listed below. The Licensees will have two years from the date of this approval to complete fence construction as submitted in their application. Changes from the application must be approved by FWP prior to implementation of modifications.

Licensee must be in compliance with all game farm statutes, rules and regulations of Montana Fish, Wildlife & Parks and Department of Livestock. Current regulations are attached for the applicant's information, but it is the licensee's responsibility to keep up with any changes in the laws or regulations. The Licensee must also comply with the stipulations listed below.

With most game farms, there is the concern of disease transmission to wild populations and also genetic 'pollution' should wild and captive animals interbreed. Wild animals such as native elk, black bears, mountain lions and coyotes can be

attracted to game farms due to the availability of food and potential breeding opportunities. Responsible management and adherence to FWP stipulations and regulations should reduce the risk of contact between wild and game farm animals to an acceptable level. The regulatory requirements for fencing and disease control should be sufficient for this purpose, and the Environmental Assessment recommends additional measures which would assist in that effort.

The recommendations, which are adopted here, include the following: that the Licensee properly store hay, feed and salt in enclosed containers and buildings a sufficient distance from the perimeter fence to minimize the attraction of wild animals; that the Licensee use commonly accepted sanitation measures to remove excess feed, dead animals and other wildlife attractants; and that the Licensee regularly patrol the fences to determine whether wild animals are gaining access to the game farm.

The proposed game farm will exclude native wildlife from using 12 acres of habitat that is currently considered secondary winter range for whitetail deer, elk, and moose. Given the small size of the proposed project, this impact is not considered significant. No noticeable impacts on wildlife movement or migration through the area are expected.

RLK noted that the impacts to surface and ground water are likely to be minor if the recommended buffer zone is maintained in an undisturbed vegetated condition, and the applicants' fencing plan includes the 25 foot buffer along the north boundary of the game farm similar to that recommended by RLK. At this time we will not require the additional fencing of the jurisdictional wetland area as recommended by RLK, based upon our review and authority, but we have forwarded the report to DEQ for its review of the issue. DEQ may require additional fencing of wetlands for prevention of water quality impacts. A preliminary review indicated that a Confined Animal Feeding Operation (CAFO) permit may be required if animal numbers result in significant loss of vegetation.

Any potential impacts on water quality not addressed herein can be mitigated by the applicant's compliance with the state's water quality standards and requirements. Point source discharges, which include operations qualifying as concentrated animal feeding operations, are regulated under Title 75, Chapter 5, Part 6, MCA, and ARM 16.20.1301, et seq. and may require permits. Nonpoint source discharges are regulated under the prohibitions against the pollution and non-degradation of state waters. Title 75, Chapter 5, Parts 3 and 6, MCA, and ARM 16.20.701 et seq. Nonpoint sources of pollution are considered non-significant sources of degradation where reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected. ARM 16.20.713. The Department of Environmental Quality

has the authority to determine whether an activity satisfies these standards. ARM 16.20.709.

In addition to its review of potential surface and ground water contamination, RLK noted that an average annual snowfall of 5.9 feet may result in significant accumulations of compacted snow along the fence line, and that FWP policy may require snow removal in the event that the standard 8 foot fence is used. It also noted that construction of a road might be required to conduct the snow removal. In view of the uncertain nature of this issue, the FWP believes it appropriate to require the applicants to submit a plan for the FWP's approval prior to licensing to address snow removal. The plan should provide for an increased fence height to 10 feet along the portion of the northern boundary of the game farm west of the existing power line and may propose other measures suitable to control the height of packed snow on the remaining perimeter of the portion of the elk enclosure.

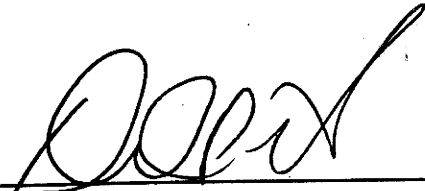
The accumulation of packed snow increases the risk of ingress and egress that exists within any game farm. The risks of disease transmission and genetic pollution associated with ingress and egress are genuine issues in this location given the presence of other wildlife, such as white-tailed deer, elk and, occasionally, mule deer, black bear, moose and mountain lion in the adjacent area. The FWP will require immediate notification of any ingress and egress to help FWP assess the adequacy of fencing requirements for this location. This should help to address problems early and may result in modifications to fence design.

The Department has the duty under the Montana Environmental Policy Act to conduct an additional environmental review if the action approved by the agency changes, subsequent to the agency's original approval, in a manner which has impacts substantially different from those which were reviewed in the original MEPA review. Ravalli County Fish and Game Association v. Montana Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995). For that reason, the Department provides notice that the MEPA review performed for the instant license application reviewed the impacts of a game farm with 20 elk. To the extent that the applicant hereafter increases the number or species of animals or makes other significant changes to the operation, a supplemental MEPA review may be conducted.

License Stipulations:

1. Licensee must report to FWP the ingress of any game animal or any predators of ungulates (e.g., mountain lion, black bear, grizzly bear or coyote) immediately upon the discovery, and the reason for such ingress.

2. The applicants shall submit and obtain FWP's approval prior to licensing for a plan to address snow accumulation. The plan shall provide for an increased fence height of 10 feet along the portion of the northern boundary of the game farm that extends west of the existing power line corridor and propose other measures suitable to control the height of packed snow.
3. A 25 foot buffer zone will be maintained between the north perimeter of the game farm fence and the adjacent property line.
4. FWP has conducted a MEPA review based upon the number of animals (20) specified in the license application. A supplemental MEPA review may be required if the applicant increases the number of animals above 20.



Daniel P. Vincent
Regional Supervisor

7/17/97

Date

Please sign and return the original to FWP to indicate your concurrence with the license stipulations listed above. A copy of the signed decision will be provided to you for your records.

Mail to: Noemí Barta, FWP Region One, 490 North Meridian Rd., Kalispell, MT 59901.

Jay Sandelin

Date

Kylanne Sandelin

Date

VELVET RIDGE ELK RANCH FINAL ENVIRONMENTAL ASSESSMENT

Proposed Game Farm Application

Montana Department of Fish, Wildlife & Parks (FWP) received an application for a game farm license from Jay and Kylanne Sandelin on October 30, 1996. On November 29, 1996, FWP accepted the original application as complete which initiated a 120-day review and decision period per laws governing game farms.

The applicants propose raising elk for breeding stock and antler production. Up to 20 elk will be raised within three fenced areas totaling 12 acres. The area is a moist forest type consisting primarily of spruce, aspen and larch that is bisected by a BPA power line. Trees vary substantially in height with most under 50'. The proposed project is located approximately 12 miles northwest of Whitefish, Montana.

The Montana Environmental Policy Act Process (MEPA)

The Montana Environmental Policy Act (MEPA) and the game farm statute require FWP to perform an environmental analysis in its review of an application for a game farm license. FWP prepares environmental assessments (EAs) to determine whether a project will have a significant effect on the environment. If the agency determines that a project will have a significant impact that cannot be mitigated to a minor impact, the agency will prepare a more detailed environmental impact statement (EIS) before making a decision. If the agency determines that a project will not have a significant impact, the agency may make its decision on whether to proceed based upon the results of the EA.

Mitigation measures may be considered in FWP's analysis as a means to reduce the impact of a game farm to a level below significance. FWP may also recommend mitigation measures to reduce impacts considered minor.

FWP prepared a draft EA, which identified no significant impacts from the proposed action that could not be mitigated, and distributed it for public review on February 28, 1997.

With most game farms, there is the concern of disease transmission to wild populations and also genetic 'pollution' should wild and captive animals interbreed. Wild animals such as native elk, black bears, mountain lions and coyotes can be attracted to game farms due to the availability of food and potential breeding

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opportunities. The draft EA identified the risk of disease to wild animal populations as a potentially significant risk but concluded that the risk would be mitigated to a level below significance through compliance with game farm regulations. It also recommended the reporting of ingress and egress of game animals and predators and specific management practices that would further reduce the risks.

The proposed game farm will exclude native wildlife from using 12 acres of habitat that is currently considered secondary winter range for whitetail deer, elk, and moose. Given the small size of the proposed project, this impact was not considered significant. No noticeable impacts on wildlife movement or migration through the area were expected.

The draft EA was distributed to the Montana Environmental Quality Council, Montana Department of Health and Environmental Quality, Montana Historical Society, Montana State Library, Montana Department of Livestock, FWP regional offices, state and local libraries, adjacent landowners, Montana Environmental Information Center, Montana River Action Network, Montana Wildlife Federation, Flathead County Commissioners, Flathead County legislative representatives, Flathead Conservation District, Flathead Wildlife, Inc., Gallatin Wildlife Association, and interested individuals. The 21-day public comment period began February 28 and closed March 20, 1997. No public hearing was held.

FWP received five written responses to the EA. In addition, one individual stated their comments by phone. All were against the proposed game farm. The threat of disease transmission to wild and domestic animals and the potential for contamination of surface and ground water were the most common issues raised. Other concerns cited include: the creation of a barrier to the movement of wild animals, increased use of a private road, the potential for impacts of a wetland area, and the threats posed by the ingress and egress of animals.

To address the concerns regarding surface and ground water contamination, the FWP determined on March 26, 1997 that further analysis was required. FWP contracted with RLK Hydro, Inc. in Kalispell, to examine the area for potential of ground and surface water contamination, whether or not the area contained jurisdictional wetlands, and if or how potential problems resulting from this project might be mitigated. Due to the heavy snowpack of this past winter, they were unable to examine the site until May 10, 1997. A final report on their findings was received by FWP on June 2, 1997.

RLK Hydro, Inc., concluded that the majority of the site consists of spruce wetland, with a lesser amount of the area considered a jurisdictional wetland,

subject to the regulatory authority of the Army Corps of Engineers. While some intermittent surface runoff could be expected to the north towards Tamarack Creek, the total amount was relatively minor. While greater surface runoff can be expected in the future due to the trampling of vegetation and the compaction of soils, its impact will be minimal given the relatively small size of the project area. RLK Hydro, Inc., also concluded that groundwater contamination was unlikely, since the principal water-producing zone lies 50 - 150' below the surface.

Nevertheless, RLK suggested that a buffer of at least 25' wide of undisturbed vegetation along the north boundary of the project area could be used to filter out sediment, nutrients, and microorganisms. This is consistent with the applicants' fencing plans.

RLK also recommended that a 50 x 125' area of jurisdictional wetlands be excluded from the enclosure. FWP has provided DEQ with the results of the RLK study. DEQ will investigate whether the magnitude of surface runoff warrants, under its authority, the fencing of the jurisdictional wetlands recommended by RLK. Any remaining minor impacts on water quality can be mitigated by the applicants' compliance with state water quality standards which could require a Confined Animal Feeding Operation permit (CAFO).

RLK also noted that the average annual snowfall at the game farm site is about 5.9 feet and that FWP policy may require snow removal in the event that the standard 8 foot fence is used. Packed snow may accumulate up to two feet in depth along the fence line; effectively lowering the height of the game farm fence. It also noted that construction of a road might be required to conduct the snow removal in view of the wetland nature of the land and that such construction would likely require a permit from the Corps of Engineers. Road construction could potentially interfere with the buffering capabilities of the wetlands area along the north boundary and therefore would not be approved. We believe that the potential for escape posed by the snow accumulation can be prevented by the preparation of a snow removal plan, which incorporates sufficient fence heights to address this problem.

Summary of Public Comments and FWP Responses

Some of the public comments were either beyond the scope of this EA or were already addressed in the draft EA. Specific comments not addressed in the draft EA are as follows:

1. ISSUE: Surface runoff from the proposed game farm will flow through neighboring properties, putting domestic animals and wildlife at risk of contracting a disease such as tuberculosis.

RESPONSE: Due to the wetness of the area, game farm elk must be quarantined off-site at a Department of Livestock approved facility. Under DoL disease testing requirements, only animals that have been tested and shown to be disease free will be transferred to the proposed game farm.

2. ISSUE: Public viewing of the elk would constitute trespass since the road is a private legal right-of-way owned by several area landowners. Increased use would cause an undue increase in maintenance costs to adjacent neighbors.

RESPONSE: The primary purpose of this game farm is not to allow public viewing of captive elk. Given its location, a noticeable increase in public use of the road is not expected. Because the road is maintained by several landowners, a road maintenance agreement should be arranged or updated among the involved parties. It is beyond FWP's authority to become involved in such an agreement unless there is a direct or potential effect on wildlife.

3. ISSUE: What effect will the proposed game farm have on water drainage from private land located directly to the south?

RESPONSE: Since there is no proposal to dam a stream, no effect on upstream properties is expected. The construction of any dam (if proposed) would come under the jurisdiction of the U.S. Army Corps of Engineers and would require special permits.

4. ISSUE: Will the water in the Stillwater River downstream from the elk enclosures be of the same quality as currently?

RESPONSE: The placement of wastes into state waters is a violation of the Water Quality Act and is under the jurisdiction of the Department of Environmental Quality. By following our guidelines and stipulations, the possibility for the proposed game farm to contaminate the Stillwater River is highly unlikely.

5. ISSUE: Who would be responsible if disease and parasite transmission did occur to my livestock, and what would their responsibilities be?

RESPONSE: Any individuals believing to have suffered personal losses from the existence of the game farm would be required to take civil action in order to assess blame and recover monetary compensation.

6. ISSUE: Who would be responsible if ingress or egress did occur, and what would their responsibilities be?

RESPONSE: Game farm operators are required to immediately report the ingress or egress of any animals to FWP. Escaped game farm animals that could not be immediately recaptured would be destroyed. FWP and the Montana state legislature acknowledge that even with the best-designed systems and fences, a certain level of risk will always exist. The legislature has directed that this risk be reduced to a minimal level by requiring maintenance of a game proof fence.

7. ISSUE: On page 7, section 4 of the EA, you assess the impact of the elk on the vegetation within the enclosure as 'minor'. Given the high water table, wouldn't the potential impact of 20 elk on 12 acres be considered 'significant'?

RESPONSE: The hydrologist's examination of the site and reporting that most of the area constitutes a 'spruce wetland' indicate that the area may be easily compacted and may be subject to severe loss of vegetation. Vegetation loss may result in sedimentation of the wetland corridor but may be mitigated through rotation of pastures or fencing out the wetlands which would be considered for water quality protection. Loss of vegetation within the game farm enclosure is not considered significant because the surrounding area will continue to support similar vegetation.

EA Conclusion

The draft EA, as modified herein, is hereby approved as the Final EA, and the recommended preferred alternative is the proposed action, modified with stipulations requiring the reporting of ingress and egress and the approval of a snow removal plan. Based upon this review, it is determined that the preferred alternative will not have a significant impact on the environment and that an EIS will not be required.

Analysis of Impact on Private Property

Montana game farm statutes (87-4-426, MCA) require that game farm licenses may be denied or issued with stipulations to prevent unacceptable threat of escape of captive game farm animals and to prevent a significant threat to the safety of the general public and surrounding landowners by the shooting of game farm animals. The Montana Environmental Policy Act (MEPA) requires FWP to identify and analyze the environmental impacts of the proposed action and potential mitigating measures. MEPA, as revised by Senate Bill 231 of 1995, also requires agencies to evaluate the impact on private property of regulatory actions, such as the denial of a permit or the establishment of permit conditions. 75-1-201, MCA. The Environmental Quality Council has established procedural guidelines to implement these requirements. The analysis provided in this EA was prepared in accordance with implementation guidance issued by the Council (Montana Legislative Services Division, EQC, 1996).

Reporting of ingress of game animals or predators of ungulates: This mitigation measure would reduce impacts to wildlife resources through timely resolution of fencing problems. There would be no effect on the market value of the property and no additional expenditure of time and money to comply.

Prepare a plan for snow removal: The game farm statutes require that a licensee maintain game proof fences and the rules define the minimum height of a game farm fence as eight feet. Accumulations of snow in this location may reduce the effective height of the fence to less than eight feet and increase the likelihood of ingress and egress. The economic impact on the licensee will be dependant on the preferred method of snow removal selected. The fence along the north boundary of the game farm (west of the existing power line corridor) will have to be raised to 10 feet because it may not be possible to plow the fence line without significantly damaging the wetlands and destroying its buffering capabilities. The addition of four strands of wire and wire stays every eight feet along this portion of the fence will not substantially increase costs. The cost of snowplowing the remaining fence line as needed should be minor. This mitigation measure will ensure compliance with statutes and rules. The alternative is to address ingress and egress events on a case by case basis which would increase the monitoring and inspection requirements of FWP. This latter alternative will also not be as effective to prevent the risks of disease transmission, genetic pollution and establishment of feral populations which the stipulation is intended to address.

In addition, the Private Property Assessment Act, 2-10-101, MCA, et seq., requires agencies to determine whether proposed actions have "taking or damaging implications" such as to constitute a deprivation of private property in

violation of the United States or Montana constitutions and, if so, to perform an impact assessment to determine the likelihood that a state or federal court would hold that the action is a taking or damaging, to review alternatives and to determine the estimated cost of compensation. In accordance with the Act, the attorney general has prepared guidelines, including a checklist, to assist the agencies in identifying and evaluating actions with taking or damaging implications.

The FWP has completed the attorney general's checklist with respect to the stipulations recommended in the preferred alternative and has found that the preferred alternative does not have taking or damaging implications and that an impact assessment is not required.

Person(s) Responsible for Preparing the EA and Response to Comments

Tim Thier, Wildlife Biologist, FWP, Region One,
P.O. Box 507, Trego, MT 59934

Game Warden Floyd Thomas
P.O. Box 1722, Kalispell, MT 59903

Karen Zackheim, Game Farm Coordinator
P.O. Box 200701, Helena, MT 59620

VELVET RIDGE ELK RANCH
JAY AND KYLANNE SANDELIN

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES NO

- X — 1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
- X 2. Does the action result in either a permanent or indefinite physical occupation of private property?
- X 3. Does the action deprive the owner of all economically viable uses of the property?
- X 4. Does the action deny a fundamental attribute of ownership?
- X 5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is **NO**, skip questions 5a and 5b and continue with question 6.]
- — 5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
- — 5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
- X 6. Does the action have a severe impact on the value of the property?
- X 7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is **NO**, do not answer questions 7a-7c.]
- — 7a. Is the impact of government action direct, peculiar, and significant?

YES NO

- _____ 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
- _____ 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.